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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,173	01/27/2000	Hideki Ito	2298/3	9525
7590	06/02/2006		EXAMINER	
KENYON & KENYON 1500 K STREET, N.W. SUITE 700 WASHINGTON, DC 20005-1257				PATTERSON, MARC A
		ART UNIT	PAPER NUMBER	
			1772	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/492,173	ITO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marc A. Patterson	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 09 March 2006.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 7-10, 14, 15, 19, 20, 24, 25 and 29 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 7-10, 14, 15, 19, 20, 24, 25 and 29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**WITHDRAWN REJECTIONS**

1. The 35 U.S.C. 103(a) rejection of Claims 7 – 10, 15, 20 and 25 as being unpatentable over Fukuda et al (U.S. Patent No. 4,985,538) in view of Shibuya et al (U.S. Patent No. 5,270,390), of record on page 2 of the previous Action, is withdrawn.

2. The 35 U.S.C. 103(a) rejection of Claims 14, 19, 24 and 29 as being unpatentable over Fukuda et al (U.S. Patent No. 4,985,538) in view of Shibuya et al (U.S. Patent No. 5,270,390) and further in view of Yoshinaka et al (U.S. Patent No. 4,996,291), of record on page 2 of the previous Action, is withdrawn.

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7 – 10, 15, 20 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Murakami et al (U.S. Patent No. 4,264,667).

With regard to Claims 7 – 10, 15, 20 and 25, Murakami et al disclose a polyester film (column 7, lines 59 – 60) comprising a non – elastomeric polyester and polyester elastomer (terephthalic polyester and block copolyester; column 4, lines 52 – 54), the non – elastomeric

polyester contained in the amount of 90 weight percent to 99.9 weight percent and the polyester elastomer contained in the amount of 0.01 weight percent to 10 weight percent (in a 99.4 : 0.6 ratio to 20 : 80 ratio by weight; column 4, lines 52 – 54); the film is shrinkable (shrinkage of within 50%; column 7, lines 55 – 58), and comprises a composition identical to that of the claimed invention as discussed above, therefore the claimed property of the film being heat shrinkable and having a shrinkage of 10% to about 40% along its main shrinkage direction in water of 70 degrees Celsius for 5 seconds and a shrinkage of about 50% or more along its main shrinkage direction in water of 95 degrees Celsius for 5 seconds and a shrinkage of about 10% or less along a direction perpendicular to its main shrinkage direction in water of 95 degrees Celsius for 5 seconds and an adhesive retention of about 99% or more after shrinkage and a haze of 3% to about 10% for a film thickness of 50  $\mu\text{m}$  a shrinkage of about 15% to about 30% along its main shrinkage direction in water of 80 degrees Celsius for 5 seconds after a preform process and a preform finish defective percentage of about 1% or less are inherent to the film disclosed by Murakami et al.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14, 19, 24 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami et al (U.S. Patent No. 4,264,667) in view of Yoshinaka et al (U.S. Patent No. 4,996,291).

Murakami et al disclose a heat shrinkable polyester film for making a label having a bonded portion as discussed above. With regard to Claims 14, 19, 24 and 29, Murakami et al fail to disclose a label which is a cap - sealing label.

Yoshinaka et al teach that labeling and cap sealing are equivalent as articles comprising a heat shrinkable polyester film (column 1, lines 15 - 32) for the purpose of making an article which attaches closely as a wrapping (column 1, lines 17 - 32). It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a label which is a cap – sealing label in Murakami et al in order to make an article which attaches closely as a wrapping as taught by Yoshinaka et al.

#### ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 7 – 10, 15, 20 and 25 as being unpatentable over Fukuda et al (U.S. Patent No. 4,985,538) in view of Shibuya et al (U.S. Patent No. 5,270,390) and 35 U.S.C. 103(a) rejection of Claims 14, 19, 24 and 29 as being unpatentable over Fukuda et al (U.S. Patent No. 4,985,538) in view of Shibuya et al (U.S. Patent No. 5,270,390) and further in view of Yoshinaka et al (U.S. Patent No. 4,996,291), of record in the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn. The new rejections above are directed to amended Claims 7 – 10, 14 – 15, 19 – 20, 24 – 25 and 29.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson* 5/30/02

Marc A. Patterson, PhD.  
Primary Examiner  
Art Unit 1772